

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

LUMMI INDIAN NATION, MAKAH
INDIAN TRIBE, QUILEUTE INDIAN
TRIBE, QUINULT INDIAN NATION,
SQUAXIN ISLAND INDIAN TRIBE,
SUQUAMISH INDIAN TRIBE, and the
TULALIP TRIBES, federally recognized
Indian tribes,

Plaintiffs,

v.

STATE OF WASHINGTON; CHRISTINE
GREGOIRE, Governor of the State of
Washington; WASHINGTON
DEPARTMENT OF ECOLOGY; JAY
MANNING, Director of the Washington
Department of Ecology; WASHINGTON
DEPARTMENT OF HEALTH; and MARY
SELECKY, Secretary of Health for the State
of Washington,

Defendants.

NO. 06-2-40103-4 SEA

PLAINTIFFS' FIRST INTERROGATORIES
AND REQUESTS FOR PRODUCTION TO
ECOLOGY AND HEALTH DEPARTMENT
DEFENDANTS

1 JOAN BURLINGAME, an individual; LEE)
2 BERNHEISEL, an individual; SCOTT)
3 CORNELIUS, an individual; PETER) NO. 06-2-28667-7 SEA
4 KNUTSON, an individual; PUGET SOUND)
5 HARVESTERS; WASHINGTON)
6 ENVIRONMENTAL COUNCIL; SIERRA)
7 CLUB; and THE CENTER FOR)
8 ENVIRONMENTAL LAW AND POLICY,)

9 Plaintiffs,)
10)

11 vs.)
12)

13 STATE OF WASHINGTON,)
14 WASHINGTON STATE DEPARTMENT OF)
15 ECOLOGY, and WASHINGTON STATE)
16 DEPARTMENT OF HEALTH,)

17 Defendants,)
18)

19 and)
20)

21 WASHINGTON WATER UTILITIES)
22 COUNCIL, CASCADE WATER ALLIANCE)
23 and WASHINGTON STATE UNIVERSITY,)

24 Defendant-Intervenors.)
25)
26)

TO: Defendants Washington Department of Ecology, Washington Department of
Health, Jay Manning and Mary Selecky.

AND TO: Alan M. Reichman, Mark H. Calkins and Stephen H. North, their counsel.

Pursuant to Rules 26, 33 and 34 of the Washington Civil Rules, plaintiffs request that you
respond, in writing and under oath, within thirty (30) days of service, to the following set of
interrogatories and requests for production.

In answering these interrogatories and requests for production, please furnish all
information available to you at the time you make your answers, including information in the

1 possession, custody or control of your agencies, consultants, contractors, attorneys, subordinates,
2 employees, and agents. If any requested document is not within your possession, custody, or
3 control, please state in whose possession, custody, or control such documents may be found.

4 Please produce the requested documents separately for each request for production, rather
5 than producing a single undifferentiated group. If the same document is responsive to more than
6 one request, you may include a written notation that identifies the requests to which it is
7 responsive in lieu of providing duplicative copies of the document.

8 If you do not or cannot respond to each of the interrogatories or requests after exercising
9 due diligence to secure the information needed to do so, please state why the responsive
10 information or documents are not or will not be made available, as well as what efforts have been
11 made to locate any responsive information or documents.

12 If any documents or responsive information concerning documents are withheld on the
13 grounds of privilege or other protection from discovery, then for each such document, please set
14 forth the date and nature of the document; the author and any recipients thereof; a general
15 description of the subject matter of the document; and the basis for the claim of privilege. If
16 responsive information regarding oral communication is withheld on the grounds of privilege or
17 other protection from discovery, please set forth the date, place, and general subject matter of the
18 communication; the identity of the person making the communication and the persons present
19 when it was made; the relationship between the persons present and the person making the
20 communication; and the basis for your claim of privilege.

21 If anything is deleted from a document produced please state: (a) the reason for the
22 deletion; (b) the subject matter of the deletion; and (c) the name of the person or persons who
23 decided to delete such matter.

1 When asked to identify a person, please state the person's name, present or former
2 position, and current business address and phone number.

3 The obligations imposed upon defendants by Rule 26, 33 and 34 of the Washington Civil
4 Rules are incorporated by reference including, but not limited to, the duty imposed by Rule 26(e)
5 to timely supplement your responses to these interrogatories and requests for production of
6 documents.

7 These interrogatories and requests are not interposed to harass or cause unnecessary delay
8 or needless increase in the cost of litigation and are not intended to be unreasonable or
9 unreasonably burdensome or expensive. If the defendants have a suggestion for responding to
10 these interrogatories or requests or for providing the information requested herein in some
11 reasonable alternative manner that they believe will be more expeditious or less expensive,
12 please contact the undersigned counsel for plaintiffs.

13 DEFINITIONS

14 As used in these interrogatories and requests for production, the following definitions
15 apply:

16 Ecology refers to the Washington Department of Ecology, its attorneys, officers, agents,
17 and employees.

18 HB 1338 refers to 2003 Wash. Laws, 1st Sp. Sess., Ch. 5.

19 Health refers to the Washington Department of Health, its attorneys, officers, agents, and
20 employees.

21 Municipal Water Supplier shall be defined as provided in RCW 90.03.015(3), except
22 when the words are enclosed in quotation marks. *See, e.g.,* Request for Production No. 9.

1 Municipal Water Supply Purposes shall be defined as provided in RCW 90.03.015(4),
2 except when the words are enclosed in quotation marks. *See, e.g.*, Interrogatories No. 2 and 7
3 and Requests for Production No. 9 and 11.

4 Pumps and Pipes Policy means the “administrative policy for issuing [water right]
5 certificates once works for diverting or withdrawing and distributing water for municipal supply
6 purposes were constructed rather than after the water had been placed to actual beneficial use” as
7 referred to in RCW 90.03.330(3).

8 Qa refers to the amount of water diverted or used over an annual period and which is
9 typically measured in terms of acre-feet per year.

10 Qi refers to the peak instantaneous quantity of water diverted or used over a short time
11 period such as a second or minute and which is typically measured in terms of cubic feet per
12 second or gallons per minute.

13 State refers to all officers, agents, and employees of the State of Washington or its
14 agencies.

15 System capacity refers to the amount of water capable of diversion, withdrawal or
16 distribution at the time works for diverting or withdrawing and distributing water for municipal
17 supply purposes were constructed.

18 Water right document and related records refers to the documents referred to in
19 RCW 90.03.560.

20 Water system plan refers to the “planning or engineering document that describes a
21 municipal water supplier’s service area under chapter 43.20 RCW, or the local legislative
22 authority’s approval of service area boundaries in accordance with procedures adopted pursuant
23 to chapter 70.116 RCW.” RCW 90.03.386(2).

1 You and Your refers to Defendants State of Washington, Christine Gregoire, Washington
2 Department of Ecology, Jay Manning, Washington Department of Health, Mary Selecky, and all
3 consultants, contractors, agents, and employees of the above defendants.

4 The terms document and record mean the complete original (or a complete copy when the
5 original is not available), unless otherwise stated, and each non-identical copy (whether different
6 from the original because of notes made on the copy or otherwise), together with all worksheets,
7 back-up documents and other relevant materials. The terms document and record include any
8 written reports, correspondence, letters, books, telegrams, memoranda, electronic and computer
9 mail, electronic data compilations, tape recordings, drawings, graphs, charts, photographs, and
10 other written or graphic material or communication however denominated from which
11 information may be obtained.

12 The term "identify" means to describe and define with particularity and precision. With
13 respect to a document, "identify" shall mean to state:

- 14 1. The name of the person who prepared it;
- 15 2. The name of the person who signed it or over whose signature it was issued;
- 16 3. The name of each person to whom it was addressed or distributed;
- 17 4. The nature and substance of the writing with sufficient particularity to enable it to
18 be identified;
- 19 5. Its date, or it bears no date, the date when it was prepared; and
- 20 6. The physical location of it and the address of its custodian or custodians.

21 The term correspondence refers to letters, emails, memoranda, or any other document to
22 or from another person or persons whether in paper or electronic format.

1 All terms include the past, present, and future; the singular includes the plural, and the
2 plural includes the singular.

3 Or shall mean and/or.

4 INTERROGATORIES AND REQUESTS FOR PRODUCTION

5 INTERROGATORY NO. 1: Identify all water right certificates issued by Ecology prior to
6 September 9, 2003, for Municipal Water Supply Purposes on the basis of the Pumps and Pipes
7 Policy, where either the Qa or Qi authorized in the certificate is greater than the Qa or Qi alleged
8 to have been put to actual beneficial use in the proof of appropriation (or other similar document)
9 filed in support of issuance of the certificate.

10 ANSWER:
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13 REQUEST FOR PRODUCTION NO. 1: For each water right certificate identified in response
14 to Interrogatory No. 1, please produce a copy of: (a) the water right certificate; (b) the water right
15 application; (c) the water right permit and report of examination; (d) the proof of appropriation;
16 and (e) any other documents relating to either the capacity of the applicant's water distribution
17 system or its actual beneficial use of water prior to issuance of the certificate.

18 RESPONSE:
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21 REQUEST FOR PRODUCTION NO. 2: Please produce any documents containing individual
22 or aggregate estimates of the difference between system capacity and actual beneficial use,
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1 measured in either Qa or Qi, for water right certificates issued by Ecology for Municipal Water
2 Supply Purposes on the basis of the Pumps and Pipes Policy prior to September 9, 2003.

3 RESPONSE:
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6 INTERROGATORY NO. 2: Identify all water right documents and related records for water
7 rights which have been amended by Ecology pursuant to RCW 90.03.560 to include the words
8 “municipal water supply purposes.”

9 ANSWER:
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12 REQUEST FOR PRODUCTION NO. 3: For each amended water right document and related
13 records identified in response to Interrogatory No. 2, please produce a copy of: (a) the original
14 water right document and related records; (b) the amended water right document and related
15 records; and (c) any other documents relating to the water right holder’s original purpose of use,
16 place of use, system capacity, and actual beneficial use of water.

17 RESPONSE:
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20 INTERROGATORY NO. 3: Identify all approved or proposed water system plans for a
21 Municipal Water Supplier where the approved or proposed service area modifies the place of use
22 from that set forth in the Municipal Water Supplier’s water rights certificates and permits.

23 ANSWER:
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3 REQUEST FOR PRODUCTION NO. 4: For each approved or proposed water system plan
4 identified in response to Interrogatory No. 3, please produce a copy of (a) the approved or
5 proposed water system plan; (b) all water right certificates and permits held by each Municipal
6 Water Supplier; (c) any applications relating to these water right certificates and permits; and (d)
7 any other documents relating to the number of service connections intended to be served by the
8 original water right applicant.

9 ANSWER:
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12 INTERROGATORY NO. 4: Identify all approved or proposed water system plans for a
13 Municipal Water Supplier where the number of service connections allowed to be served in the
14 approved or proposed water system plan is greater than the service connection figure in the
15 Municipal Water Supplier's water right application or any subsequent water right document.

16 ANSWER:
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19 REQUEST FOR PRODUCTION NO. 5: For each approved or proposed water system plan
20 identified in response to Interrogatory No. 4, please produce a copy of (a) the approved or
21 proposed water system plan; (b) all water right certificates and permits held by each Municipal
22 Water Supplier; (c) any applications relating to these water right certificates and permits; and (d)
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any other documents relating to the number of service connections intended to be served by the original water right applicant.

RESPONSE:

INTERROGATORY NO. 5: Identify all approved or proposed water system plans for a Municipal Water Supplier where the population allowed to be served in the approved or proposed water system plan is greater than population figures in the Municipal Water Supplier's water rights application or any subsequent water right document.

ANSWER:

REQUEST FOR PRODUCTION NO. 6: For each currently effective or proposed water system plan identified in response to Interrogatory No. 5, please produce a copy of the (a) the proposed or approved water system plan; (b) all water right certificates and permits held by the Municipal Water Supplier; (c) any applications relating to these water right certificates and permits; and (d) any other documents relating to the population intended to be served by the original water right applicant.

RESPONSE:

INTERROGATORY NO. 6: Identify by date, applicant, and application number all instances in which Ecology or its attorneys has informed (either orally or in writing) an applicant for a water

1 right change or transfer that Ecology's approval of the requested change was unnecessary due to
2 the legal effects of RCW 90.03.386(2) or RCW 90.03.260(4) or (5).

3 ANSWER:
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6 REQUEST FOR PRODUCTION NO. 7: For each instance identified in response to
7 Interrogatory No. 6, please produce: (a) a copy of the water right permit or certificate that the
8 applicant was seeking to change or transfer; (b) a copy of the application for change or transfer;
9 (c) any protests to or comments upon the proposed change or transfer; and (d) all correspondence
10 between Ecology and the applicant relating to the proposed change or transfer.

11 RESPONSE:
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14 REQUEST FOR PRODUCTION NO. 8: Please produce all documents identifying, evaluating,
15 describing, predicting, forecasting, or estimating the effects of HB 1338, or any provision
16 thereof, on (a) consumptive water use; (b) stream flows, (c) fish habitat or production, (d) Indian
17 treaty rights, or (e) existing water rights.

18 RESPONSE:
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21 REQUEST FOR PRODUCTION NO. 9: Please produce all documents you prepared prior to
22 September 9, 2003, (a) defining or discussing the terms "municipal water supply purposes" or
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1 “municipal water supplier”; or (b) defining or discussing the terms “municipal” or
2 “municipality” in the context of State water resources law.

3 RESPONSE:

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6 REQUEST FOR PRODUCTION NO. 10: Please produce any documents created between July
7 2, 1998, and September 9, 2003, containing analyses of the validity and/or quantification of
8 water rights issued by Ecology for Municipal Water Supply Purposes on the basis of the Pumps
9 and Pipes Policy.

10 RESPONSE:

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13 INTERROGATORY NO. 7: Please describe how Ecology, including its attorneys, defined, used
14 or applied the term “municipal water supply purposes,” prior to September 9, 2003, with respect
15 to (a) RCW 90.14.140(2)(d), and (b) other provisions of Washington water law.

16 ANSWER:

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19 REQUEST FOR PRODUCTION NO. 11: Please produce any documents created by Ecology,
20 including its attorneys, before September 9, 2003, which define, use or apply the term
21 “municipal water supply purposes” in the context of decisions or policies relating to (a)
22 relinquishment of water rights; (b) perfection of water rights; or (c) other issues of water
23 resource management.

1 ANSWER:

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4 INTERROGATORY NO. 8: Do you contend that RCW 90.14.140(2)(d) applies to excuse
5 nonuse of a water right held by non-governmental entity for Municipal Water Supply Purposes
6 where such nonuse occurred prior to September 9, 2003?

7 ANSWER:

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10 INTERROGATORY NO. 9: Prior to September 9, 2003, did Ecology consider population
11 figures or service connections provided in water right certificates or other water rights
12 documents to be limits on the lawful use of a water right held for Municipal Water Supply
13 Purposes?

14 ANSWER:

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17 REQUEST FOR PRODUCTION NO. 12: Please produce any documents created by Ecology, or
18 its attorneys, prior to September 9, 2003, which discuss population figures or service connections
19 in the context of: (a) administrative proceedings involving a tentative determination of the extent
20 and validity of a water right held for Municipal Water Supply Purposes; (b) administrative
21 proceedings involving proposed transfers or changes to a water right held for Municipal Water
22 Supply Purposes; (c) administrative proceedings involving relinquishment; and (d) Ecology's
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1 position or recommendation in a judicial water rights adjudication with respect to the extent or
2 validity of a water right held for Municipal Water Supply Purposes.

3 RESPONSE:

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6 INTERROGATORY NO. 10: Please describe the process by which Health will ensure that
7 approval of an amendment to a water system plan affecting a Municipal Water Supplier's (a)
8 service area, (b) population served, or (c) number of approved service connections, will not
9 affect existing water rights or instream flows.

10 ANSWER:

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13 INTERROGATORY NO. 11: Please describe the procedures by which interested third parties
14 (other than the licensee Municipal Water Supplier) may administratively appeal a decision
15 approving changes to a Municipal Water Supplier's water system plan.

16 ANSWER:

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19 INTERROGATORY NO. 12: Describe with particularity all expenditures that Ecology, Health,
20 or any other state agencies have made in implementing the Municipal Water Law and the
21 source(s) of the funds used for these expenditures.

22 ANSWER:

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2 INTERROGATORY NO. 13: Identify all water right documents and related records for water
3 rights that, prior to September 9, 2003, designated the place of use of a water right as the water
4 right holder's service area or the general area that the water right holder provided water to, rather
5 than by metes and bounds or another description of land area.

6 ANSWER:
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9 REQUEST FOR PRODUCTION NO. 13: For each water right document and related records
10 identified in response to Interrogatory No. 13, please produce a copy of: (a) the original water
11 right document and related records; (b) any amended water right document and related records;
12 and (c) any other documents relating to the water right holder's purpose of use, place of use,
13 system capacity, and actual beneficial use of water.

14 RESPONSE:
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17 REQUEST FOR PRODUCTION NO. 14: Please provide any documents created by Ecology,
18 Health, or its attorneys that address issues relating to populations served or service connections
19 in the context of Municipal Water Suppliers or Municipal Water Supply Purposes.

20 RESPONSE:
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1 REQUEST FOR PRODUCTION NO. 15: Please provide any documents created by Ecology or
2 its attorneys that provide guidance for issuing new water rights or certificates of change for
3 Municipal Water Supply Purposes in closed basins or where streams do not meet instream flow
4 requirements.

5 RESPONSE:
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8 REQUEST FOR PRODUCTION NO. 16: Please provide any documents created by Ecology or
9 Health that address the coordination of water right evaluations in the context of the approval of
10 new water system plans.

11 RESPONSE:
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14 INTERROGATORY NO. 14: Identify each person you or your attorneys expect to testify at trial
15 as a fact witness or expert witness. For each expert witness, state: (a) the subject matter on
16 which the expert is expected to testify; (b) the substance of the facts and opinions to which the
17 expert will testify; and (c) a summary of the grounds for each such opinion.

18 ANSWER:
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21 INTERROGATORY NO. 15: Identify each person likely to have discoverable information that
22 you may use to support your defenses in this litigation.

23 ANSWER:
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3 INTERROGATORY NO. 16: Identify all documents, data compilations, and tangible things that
4 are in your possession, custody and control and that you may use to support your defenses in this
5 litigation.

6 ANSWER:
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9 REQUEST FOR PRODUCTION NO. 17: Please produce all documents identified in your
10 response to Interrogatory No. 16.

11 RESPONSE:
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14 INTERROGATORY NO. 17: Identify all persons who assisted in your preparation of answers
15 and responses to these interrogatories and requests for production or to your preparation of
16 responses to Plaintiffs' First Requests for Admission.

17 RESPONSE:
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20 Interrogatories and Requests for Production dated this 27th day of April, 2007.
21

22 /s/ John Arum
23 JOHN ARUM (WSBA #19813)
24 BRIAN C. GRUBER (WSBA #32210)

1 *Counsel for the Makah Indian Tribe*
2 *in Case No. 06-2-40103-4 SEA*

3
4 /s/ Harry L. Johnsen
HARRY L. JOHNSEN (WSBA #4955)

5 *Counsel for Lummi Nation*
6 *in Case No. 06-2-40103-4 SEA*

7
8 /s/ Melody Allen
MELODY ALLEN (WSBA #35084)

9 *Counsel for the Suquamish Tribe*
10 *in Case No. 06-2-40103-4 SEA*

11
12 /s/ Kevin Lyon
KEVIN LYON (WSBA #15076)

13 *Counsel for the Squaxin Island Tribe*
14 *in Case No. 06-2-40103-4 SEA*

15
16 /s/ Mason Morisset
MASON MORISSET (WSBA #273)

17 *Lead Counsel for the Tulalip Tribes*
18 *in Case No. 06-2-40103-4 SEA*

19
20 /s/ Kimberly Ordon
KIMBERLY ORDON (WSBA #16832)

1
2 /s/ Michael Taylor
3 MICHAEL E. TAYLOR (WSBA #3664)

4 *Co-counsel for the Tulalip Tribes*
5 *in Case No. 06-2-40103-4 SEA*

6 /s/ Karen Allston
7 KAREN ALLSTON (WSBA #25336)
8 JOSEPH CALDWELL (WSBA #22201)

9 *Counsel for the Quinault Indian Nation*
10 *in Case No. 06-2-40103-4 SEA*

11 /s/ Katherine Krueger
12 KATHERINE KRUEGER (WSBA #25818)

13 *Counsel for the Quileute Indian Tribe*
14 *in Case No. 06-2-40103-4 SEA*

15 /s/ Shaun Goho
16 PATTI GOLDMAN (WSBA #24426)
17 SHAUN GOHO (WSBA #37609)

18 *Counsel for Burlingame Plaintiffs*
19 *in Case No. 06-2-28667-7 SEA*

1 **VERIFICATION**

2 STATE OF _____)
3 COUNTY OF _____) ss.

4 I, _____, declare:

5 That I am an authorized representative of the State of Washington Department of
6 Ecology and Jay Manning in the above-entitled lawsuit to whom these interrogatories and
7 requests for production are addressed, and as such am authorized to make this verification; that I
8 have read the foregoing responses to requests for production, know the contents thereof, and
9 believe the same to be true.

10 I declare under penalty of perjury under the laws of the State of Washington that the
11 foregoing is true and correct.

12 Executed on the ____ day of May, 2007, at _____.

13
14 _____
15 Signature
16 Authorized Representative of
Defendants Washington Department of Ecology
and Jay Manning

17 **ATTORNEY'S RULE 26(G) CERTIFICATION**

18 The undersigned attorney for Defendants Washington Department of Ecology and Jay
19 Manning has read the foregoing answers and responses to these discovery requests, and certifies
that they comply with Fed.R.Civ.P. 26(g).

20 Dated _____

21 _____
22 Attorneys for Defendants Washington Department
23 of Ecology and Jay Manning
24

1 **VERIFICATION**

2 STATE OF _____)
3 COUNTY OF _____) ss.

4 I, _____, declare:

5 That I am an authorized representative of the State of Washington Department of Health
6 and Mary Selecky in the above-entitled lawsuit to whom these interrogatories and requests for
7 production are addressed, and as such am authorized to make this verification; that I have read
8 the foregoing responses to requests for production, know the contents thereof, and believe the
9 same to be true.

10 I declare under penalty of perjury under the laws of the State of Washington that the
11 foregoing is true and correct.

12 Executed on the ____ day of May, 2007, at _____.

13
14
15 _____
Signature
Authorized Representative of
Defendants Washington Department of Health
16 and Mary Selecky

17 **ATTORNEY'S RULE 26(G) CERTIFICATION**

18 The undersigned attorney for Defendants Washington Department of Health and Mary
19 Selecky has read the foregoing answers and responses to these discovery requests, and certifies
that they comply with Fed.R.Civ.P. 26(g).

20 Dated _____

21
22 _____
Attorneys for Defendants Washington Department
of Health and Mary Selecky

